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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,805	08/29/2001	Daniel P. Stachowicz	58880/278	4584

23838 7590 07/26/2006

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	09/940,805	STACHOWICZ ET AL.	
	Examiner	Art Unit	
	Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2006. + 4/25/06
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shannon ('238), as further evidenced by Janik (EP'132), in view of Craig (GB '224), Schultz et al ('809), Ekdahl ('111), Lacey ('262), Loucony ('533), Setecka ('458), and Hueg (' 719), further in view of Ooms (EP '006), Berrod (FR '674), Parrish et al ('523), Weschler ('496), Delorimiere ('917), Moore ('654), Knight ('165) Niggemeyer ('584), and applicants admission of the prior art for the reasons fully and clearly detailed in the Office action mailed 9/30/05.

The Declaration filed by Mr. Wurster, under 37CFR 1.132, on 4/26/06, has been fully and carefully considered but is not found to be sufficient to overcome the prima facie case of obviousness set forth in the rejection. The Declaration is devoid of factual evidence, merely stating opinions. The Declaration is also not commensurate in scope with the claims nor does it address the rejection. The rejection states that it would have been obvious to provide a non-circular decorative tip with means to accept and secure other decorative tips to provide the user with greater choice of designs or it would have been obvious to modify the circular outlet coupler, which already has a means to accept and secure decorative tips, by providing a non-circular outlet; all in view of the art taken as a whole. The art, taken as a whole, teaches providing the outlets of extruder bags with screw threads to allow the bag to have various shaped extruder nozzles attached

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to it so that there is much greater flexibility or variation in the shape of the extrudate.

Note that even the so-called non-circular decorative tip is a bag outlet. The art, taken as a whole, also teaches that a circular outlet is still considered a decorative nozzle, so that a so-called coupler with a circular outlet opening is still capable of being used as a decorative nozzle. Thus, when one attempts to make a distinction between a non-circular decorative tip (which is, after all, in reality or functionally, a nozzle outlet), and a coupler which has a circular outlet, (which will produce a round, cylindrical ribbon which the art considers to be a decorative shape), one is urging (incorrectly) intended use capability when the difference is truly and merely a matter of shape (i.e. design).

The Declaration urges that Shannon's coupler shows a circular opening that is substantially larger than the opening of the attached decorative tip. The Declaration further urges that, based on the Declarant's knowledge, the reason the opening is larger is so that the material will flow with minimum resistance from the bag through an attached tip. Declarant then concludes that, in Declarant's opinion, one would not be motivated to modify the large circular coupler opening to the non-circular coupler opening, presumably because one would expect a non-circular opening to cause an unduly greater resistance to flow and there would be no reasonable expectation of success. This whole line of reasoning/opinion is not convincing since there appears to be no significant difference in size between Shannon's non-circular nozzle (40) employed by itself, without an adaptor/coupler, and Shannon's circular, threaded adaptor/coupler. In fact, the nozzle (40), which is disclosed as the element that is directly attached to the bag, and directly extrudes the material, appears, if anything, to

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be slightly larger than the adaptor/coupler. Therefore, Shannon teaches a working extruder/decorative nozzle with a large opening that is non-circular, so that it is not seen why an increase in resistance to flow, if any, caused by a non-circular opening would be significant and it is therefore not seen why one of ordinary skill in the art would not have a reasonable expectation of success. Finally, note that neither the Declaration nor the remarks address the issue raised in the Office action mailed 9/30/05 as to why the recitation "non-circular" need necessarily exclude a nozzle with say a zig-zag rim around its circumference.

All of the remarks in the amendment, filed 4/25/06, have been fully and carefully considered but are found to be essentially a summary of the points made in the Declaration and addressed above. Note that neither the Declaration nor the arguments address the fact, set forth in the rejection in the last Office action, that the art taken as a whole teaches that a solid cylindrical extrudate, produced from a circular outlet, is still a decorative shape so that a circular outlet would inherently be called or at least be capable of functioning as a decorator tip/nozzle. Whatever one chooses to call the attachment, based on its intended use or otherwise, the attachment is still an outlet for a bag to allow material to be extruded therethrough, and the art taken as a whole teaches one can add threads or other securing means onto the attachment element to attach additional attachment elements thereto to vary the shape of the extruded material in an easy manner. There therefore is no unexpected result. It is also not clear that reciting a non-circular decorative tip even excludes a zig-zag pattern on an otherwise circular outlet. Finally, it is noted that any urgings relative to size of coupler opening versus size

of decorative tip opening is directed to limitations not found in the claims since the claims are silent in this regard. However, as noted above, even if such sizes were recited, in view of the art, taken as a whole, any urging in this regard would not appear to be convincing.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday from 7:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
7/24/06